

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D.C. 20548

60214 197683

FILE: B-185096

DATE: November 25, 1975

MATTER OF: United Tire & Rubber Co.

OPINION:

In sale of Government surplus scrap rubber, where successful bid was 27 times greater on one item and 3 times greater on another item than next highest bidders on those respective items, contracting officer was on constructive notice of possible error in bid; therefore, sales contract may be rescinded since bid verification was not sought prior to award.

This decision involves a mistake in bid by United Tire and Rubber Co. (United) alleged after an award to it of items 42 and 53 (surplus scrap rubber), under sales contract No. 41-5326-091. Contracting Assistant Counsel, Headquarters, Defense Supply Agency, in concurrence with the Defense Property Disposal Service, recommended the rescission of the sales contract by his letter of October 8, 1975 on the ground that United's intended final bid of \$0.003 per pound was mistakenly transmitted by Western Union as \$0.03 per pound. In this connection, it is noted that United's bid was 27 times greater than the second highest bid for item 42, and 3 times greater than the second highest bid for item 53. Therefore, it was concluded that the disparity was large enough to put the contracting officer on notice of possible error, but he neglected to take proper steps to verify the bid.

On March 3, 1975, a telex modification was sent by United Tire and Rubber Co. to Western Union which apparently increased its bid on items 42 and 53 to \$0.03 per pound. On March 10, 1975, the award on these items was made to United on the basis of the following bids received:

| | <u>Bidder</u> | <u>Unit Bid/lb.</u> | <u>Total Bid</u> |
|----------|---------------|---------------------|------------------|
| Item 42: | 91 (United) | \$.03 | \$2,250.00 |
| | 116 | .00111 | 83.25 |
| Item 53: | 91 (United) | .03 | 1,800.00 |
| | 58 | .0095 | 570.00 |
| | 76 | .005 | 300.00 |
| | 116 | .00321 | 192.60 |
| | 122 | .0026 | 156.00 |
| | 106 | .00251 | 150.60 |

United's original total bid on each of these items had been \$100. By letter dated April 18, 1975, United alleged an error in its bid stating that it intended to bid \$0.003 per pound but that figure was mistakenly transmitted by the Western Union operator as \$0.03 per pound. Western Union has neither confirmed nor denied that it made an erroneous transmission.

As a general rule when a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral mistake. Saligman, et al. v. United States, 56 F.Supp. 505 (E.D. PA. 1944). However, our Office has consistently allowed the rescission of such a contract if the contracting officer had actual or constructive notice that the bidder made a mistake and neglected to verify the bid. 37 Comp. Gen. 685 (1953); Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90.

To determine whether a contracting officer has a duty to verify bid prices, we have stated that the test is one of reasonableness; whether based on the particular case there were any factors which reasonably could have raised the presumption of error in the mind of the contracting officer. 49 Comp. Gen. 272, 274 (1969); Acme Refining - Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113.

In cases where the mistake in bid is alleged in the sale of Government scrap, it has been held that a wide variance in bid prices is sufficient to put the contracting officer on constructive notice of possible error. Sitkin Smelting and Refining, Inc., B-182334, December 16, 1974, 74-2 CPD 348. This is so because wide price variances normally are not encountered in the sale of scrap as there is an established market for scrap and there are limited uses to which it may be put.

Regarding Item 42, two widely variant bids were received, and United's bid was more than 27 times as great as the other bid. With regard to Item 53, the United bid was 3 times greater than the second high bid, 6 times greater than the third, and 9 to 12 times greater than the fourth through sixth bids. In these circumstances, a sufficient basis for comparison existed for the contracting officer to have been alerted immediately to the possibility of a mistake. We are of the opinion, therefore, that the difference in the prices of the bids was sufficient to charge the contracting officer with constructive notice of the possibility of error. 53 Comp. Gen. 30, 31 (1973). Since there was no verification of United's bid, no valid and binding contract was consummated by its acceptance and the sales contract may be rescinded as recommended.


Deputy Comptroller General
of the United States